

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Crim. No. 03-091-SLR
)
ANDRE HUGGINS,)
)
 Defendant.)

MEMORANDUM ORDER

I. INTRODUCTION

Defendant Andre Huggins moves to suppress statements he made to law enforcement officers on August 26, 2003. (D.I. 30) An evidentiary hearing was held on August 3, 2004. (D.I. 72) The court has jurisdiction pursuant to 18 U.S.C. § 3231. Pursuant to Federal Rule of Criminal Procedure 12(d), the following constitutes the court's essential findings of fact.

II. FINDINGS OF FACT

1. On August 26, 2003, three simultaneous search warrants were executed on: (1) defendant's residence, 30 Blue Spruce Drive, Bear, Delaware; (2) the residence of defendant's girlfriend Heather Blake, 105 Mederia Circle, Newark, Delaware; and (3) the residence of co-defendant Jermaine Franklin, 101 Chestnut Crossing, Apartment H, Newark, Delaware. (D.I. 72 at 8, 30)

2. The affidavit in support of the search warrant was

written by Drug Enforcement Administration ("DEA") special agent Eric Miller ("Miller"). (Id. at 7; GX4) Miller has been employed by DEA for fourteen years. He and Internal Revenue Service ("IRS") special agent Raymond Greene ("Greene") have been investigating defendant for about three years. (Id. at 8)

3. At approximately 1:00 p.m. on August 26, 2003, federal, state and local law enforcement officers executed the warrant on defendant's residence.¹ (Id. at 12) It was a search warrant directed to documents.² (Id. at 67) The officers did not have an arrest warrant for defendant. (Id. at 11, 67) Because Miller had determined that the warrant would be executed when no one was inside the residence, surveillance was established to monitor defendant's presence at the house. (Id. at 11-12, 43) After surveillance officers concluded that defendant was not at home, the information was relayed over the police radio to Miller, who ordered the operation to commence. (Id. at 44)

4. Officers knocked on defendant's door and, when no one answered, Miller decided to forcibly enter. He directed another officer to return to a police vehicle to retrieve a battering ram. (Id. at 118-119) Miller and Task Force Officer Larry

¹The searches executed at the other two residences are not relevant to the analysis at bar.

²Testimony established that the search warrant authorized entrance to "a person's home to look for receipts or any sort of paperwork involved in any crimes or any violations." (Id. at 137)

Collins³ were the first officers to enter the residence. (Id. at 13) Inside, to their surprise, they immediately found defendant standing in the foyer about 10-15 feet away from them. (Id. at 13) Defendant was on his cell phone. (Id. at 123) Miller's weapon was drawn and he ordered defendant to get down on the floor; defendant complied. (Id. at 14-15, 123) Consistent with standard practice, Miller handcuffed defendant and directed him to sit on a couch. Miller then returned his weapon to its holster. (Id. at 15, 41, 206-207) As other officers secured the residence, Miller and Collins stayed with defendant. (Id. at 15) No one else was found in the home.

5. While on the couch, Miller removed defendant's handcuffs and showed him a copy of the search warrant. (Id. at 16) Miller told defendant that the search pertained to an IRS money laundering investigation and that it was "strictly a document search warrant." (Id. at 96) Reading from a standard DEA 13-A card,⁴ Miller advised defendant of his Miranda warnings at 1:13 p.m. (Id. at 46, 18) Although Miller's interview notes reflect a notation of "1:13 pm Miller/Collins Miranda," there is no executed waiver form nor anything written demonstrating that defendant waived his rights and agreed to speak with the

³Collins is a Delaware parole officer and has been assigned to the DEA Task Force for the past seven years. (Id. at 122)

⁴Admitted into evidence as GX1.

officers. (Id. at 47-48, 50, 18; DXI)

6. Defendant told Miller he wanted to speak with them, but first wanted to speak with Collins alone. (Id. at 16, 19, 43, 91, 123). Defendant knew Collins from a previous investigation conducted by Delaware Parole and Probation. Because defendant did not want to be perceived as an informant to other officers searching through the residence, he asked to speak with Miller and Collins, privately, upstairs. (Id. at 213) Defendant also indicated that he was uncomfortable with Greene. (Id. at 20, 125)

7. As other officers were clearing the residence and beginning the search, Miller indicated that he, Collins and defendant were moving upstairs. (Id. at 21) Miller, Collins and defendant went upstairs to defendant's bedroom. (Id. at 22, 92, 126) Defendant's bedroom was "a large master bedroom," with a sitting room off to the side. (Id. at 24) In addition to a bed, there was a large chair and ottoman.

8. In the bedroom, defendant sat on the chair, Collins sat on the bed and Miller moved from place to place as he handled administrative matters. (Id.) After Collins explained Greene's role in the investigation, defendant agreed Greene could join the conversation. (Id. at 22-23, 93) Collins told defendant that they were there as part of a drug and money laundering investigation. (Id. at 123) Miller added that the investigation

concerned the financial end of a drug investigation. (Id. at 116) They also told defendant that they had compiled a lot of information against him through the use of surveillance, phone monitoring and examination of financial documents. (Id. at 180) As the interview progressed, Collins assured defendant that he would not be arrested that evening and, instead, would "sleep in his own bed" that night. (Id. at 115) Defendant answered questions about the investigation of a car dealership as well as other matters. (Id. at 214, 234)

9. Miller took notes of the conversation. Miller left the interview numerous times to address phone calls or administrative matters. (Id. at 16, 23, 25, 127) He missed parts of the interview entirely and, with others, only heard pieces of the discussion between Collins and defendant. (Id. at 93-94) When Miller was out of the room, Greene took notes for him. (Id. at 38; DX1)

10. Defendant was allowed to keep possession of his cellular phone and made at least one phone call to a friend. (Id. at 28, 92-93) Defendant called this person to explain that Delaware Parole and Probation was present at his residence conducting a routine search for administrative purposes. (Id. at 30)

11. Sometime later in the interview, Miller handed

defendant a written Miranda waiver form.⁵ (Id. at 32, 49)

Miller did not read aloud the Miranda warnings outlined on the form. Collins and Miller watched defendant sign the form and, then, signed it as witnesses. A notation of "2:40 p.m." appears at the top of the form but the "time" space under the witness lines is blank. (Id. at 61; GX2) Defendant denies actually reading the form.⁶ (Id. at 62) After the form was executed, Miller reviewed his notes with defendant to see if they were correct. (Id. at 35-36, 55) Miller did not read the notes, verbatim, to defendant; instead he paraphrased them. (Id. at 35) Defendant told Miller to correct one aspect of the notes. (Id.

⁵This is a DEA form titled "Miranda Advisement" that reads as follows:

- (1) Before we ask you any questions, you must understand your rights.
 - (2) You have the right to remain silent.
 - (3) Anything you say can be used against you in court.
 - (4) You have the right to talk to a lawyer for advice before we ask you questions, and to have a lawyer with you during questioning.
 - (5) If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
 - (6) If you decide to answer questions without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.
- (GX2)

⁶Defendant testified that he did not read the waiver, but signed it nonetheless because he believed it was related to a laptop computer that was to be confiscated. He explained that during an earlier encounter with Delaware Parole and Probation and Collins, his laptop was confiscated and returned to him later as damaged. Defendant testified that he believed Collins was asking him to sign the form to avoid the problems and accusations that emanated from that earlier confiscation.

at 36, 55) Defendant did not sign the notes nor did he prepare his own statement.⁷ (Id. at 113, 81, 154)

12. Defendant was calm during the interview that lasted approximately five hours. (Id. at 25) Defendant was not under the influence of drugs or alcohol. The agents were aware that defendant had a criminal record. (Id. at 27) Defendant did not ask for an attorney at any time. (Id. at 110-31)

13. At the end of the interview, defendant was moved into another bedroom. (Id. at 40) Miller contacted the United States Attorney's Office with the information obtained and was instructed to arrest defendant, immediately, without a warrant. (Id. at 40) After defendant was placed under arrest, no additional questioning occurred and the search of the residence ended at the same time. (Id. at 41)

III. CONCLUSIONS OF LAW

1. The Fifth Amendment to the United States Constitution, which applies to the states by way of the Fourteenth Amendment, provides that no person shall be compelled in any criminal case to be a witness against himself. U.S. Const. Amend. V; U.S. Const. Amend XIV; Malloy v. Hogan, 378 U.S. 1 (1964).

2. In the seminal case, Miranda v. Arizona, 384 U.S. 436,

⁷The notes are a summary of the conversation between defendant, Collins, Greene and Miller. Although there was much discussion about the veracity of the notes, the issue before the court is whether the statement was given voluntarily by defendant.

444-45 (1966), the Supreme Court held that

the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. . . . As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently.

3. The examination of whether a defendant has waived effectuation of the Miranda rights has two parts:

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the totality of the circumstances surrounding the interrogation reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.

Moran v. Burbine, 475 U.S. 412, 421 (1986) (internal quotations marks and citations omitted). As explained by the Third Circuit:

This inquiry requires us to consider the totality of the circumstances surrounding the interrogation, which includes examining the events that occurred and the background, experience, and conduct of the defendant. Miranda rights will be deemed waived only where the totality of the circumstances "reveal[s] both an uncoerced choice and the requisite level of comprehension.

United States v. Sriyuth, 98 F.3d 739, 749 (3d Cir. 1996) (quoting Moran, 475 U.S. at 421) (citations omitted); see also, Reinert v. Larkins, 379 F.3d 76 (3d Cir. 2004).

4. It is plaintiff's burden of proving by a preponderance of the evidence that defendant's statements were made voluntarily. United States v. Swint, 15 F.3d 286, 289 (3d Cir. 1994); Colorado v. Connelly, 479 U.S. 157, 168-69 (1986); Lego v. Twomey, 404 U.S. 477, 489 (1972); Arizona v. Fulminante, 499 U.S. 279, 285-89 (1991).

5. The totality of the circumstances include: 1) evidence of police coercion; 2) the length and location of the interrogation; 3) the defendant's maturity, physical condition, mental health and level of education; 4) whether Miranda warnings were given; and 5) whether an attorney was present for the interview. Swint, 15 F.3d at 289; see also United States ex rel. Hayward v. Johnson, 508 F.2d 322, 326 (3d Cir. 1975) ("we must satisfy ourselves that the confession was the product of a free and unconstrained choice by its maker"); Colorado v. Connelly, 479 U.S. at 164 (a confession is involuntary if it is the product of overreaching police conduct). Also relevant to this inquiry is the defendant's background and experience, including dealings with the criminal justice system. Oregon v. Bradshaw, 462 U.S. 1039, 1046 (1983).

6. A promise by a law enforcement officer to a "person

suspected of a crime in exchange for the person's speaking about the crime does not automatically render inadmissible any statement obtained as a result of that promise." United States v. Walton, 10 F.3d 1024, 1029 (3d Cir. 1993); United States v. Conley, 859 F. Supp. 830, 836 (W.D. Pa. 1994) (under certain circumstances, a promise can constitute coercion). The promise becomes a factor in the totality of the circumstances inquiry of whether a statement is voluntary. Walton, 10 F.3d at 1028. The "real issue is not whether a promise was made, but whether there was a causal connection between [the] assurance and [a defendant's] statement." Id. at 1029.

7. Considering the totality of the record evidence and the applicable law, the court finds that defendant was afforded Miranda warnings and his statements were voluntary.⁸ Specifically, the record demonstrates that defendant was advised

⁸The court finds plaintiff's alternative argument (that Miranda protections were unnecessary because defendant was not in custody at the time the statements were made) is unsupported by the record. The central inquiry into whether an individual is in custody for Miranda purposes has been defined by the Third Circuit as follows: "Whether there is a formal arrest or restraint of freedom of movement of the degree associated with a formal with a formal arrest." United States v. Leese, 176 F.3d 740, 743 (3d Cir. 1999). An objective evaluation of the record establishes that: (1) Miller read and later provided defendant with a Miranda warnings form; (2) the form was signed and witnessed by the officers; (3) defendant was confined to an area during the questioning; and (4) although unclear whether he requested permission to leave the house, an objective evaluation of the circumstances suggests that defendant was not free to leave.

of Miranda warnings almost immediately upon the officers' entry in the residence. Further, testimony of the agents, their signatures on the form, as well as the clearly identified Miranda waiver form itself, demonstrate to the court's satisfaction that defendant signed knowingly.

8. Although the interview lasted over five hours, there is no evidence presented establishing that the actions of the agents caused defendant's will to be so overborne that his decision to speak with law enforcement was the result of coerced choice. Significantly, the record does not reflect that the agents' conduct was overreaching or that Collins' promise was the cause of defendant's statements.⁹

VI. CONCLUSION

At Wilmington this 21st day of October, 2004, for the reasons stated, IT IS ORDERED that defendant's motion to suppress (D.I. 30) is denied.

Sue L. Robinson
United States District Judge

⁹In this regard, it is important to note that Collins believed defendant would not be arrested; it was the Office of the U.S. Attorney that directed otherwise. Moreover, the promise to not arrest defendant immediately never included within its scope a promise not to use defendant's statements to further the investigation against defendant.